

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CHRISTOPHER MARK HEADEN,)
Petitioner,)
v.) 1:12CV1227
JOSEPH B. HALL,)
Respondent.)

ORDER

On November 16, 2012, the United States Magistrate Judge's Order and Recommendation (Doc. 3) was filed, and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner Christopher Mark Headen filed objections to the Recommendation within the time limit prescribed by section 636 (Doc. 5).

The court has reviewed those portions of the Recommendation to which Petitioner objects and has made a *de novo* determination. The court finds that the objections do not change the substance of the United States Magistrate Judge's rulings, which are affirmed and adopted.

IT IS THEREFORE ORDERED that Petitioner's habeas petition under 28 U.S.C. § 2254 is filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition after he exhausts his state court remedies.¹ Finding neither a substantial issue

¹ Subsequent to filing objections, the Petitioner filed a new petition asserting the same ground as the Petition in this case but attaching the North Carolina Supreme Court's December 12, 2012 dismissal of his

for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is not issued.

/s/ Thomas D. Schroeder
United States District Judge

January 14, 2013

motion "for Petition for Actual Innocence." Consideration of the new petition is proceeding in a separate case. See Headen v. Hall, No. 1:13-cv-00003 (M.D.N.C.), Doc. 2 (attaching letter of dismissal).